

# FUNCTIONS OF THE STAFF JUDGE ADVOCATE

## MISSION

The Judge Advocate General's Corps provides essential legal support for military operations; advocates and litigates to preserve command prerogatives; administers civil and criminal law programs; educates and counsels leaders and personnel in the law; and recruits, trains, and equips quality legal professionals

## DEFINITIONS

- Judge Advocate: An Air Force officer designated as such by The Judge Advocate General
  - Graduate of an American Bar Association accredited law school
  - Member in good standing and admitted to practice before a federal court or the highest court of a U.S. state, territory, or the District of Columbia
- Staff Judge Advocate (SJA): Senior judge advocate on extended active duty normally on the installation commander's staff unless otherwise specified by The Judge Advocate General
  - Serves as the legal advisor for the Wing Commander in his or her capacity as the representative of the Air Force
  - Supervises the members of the base legal office
- Assistant Staff Judge Advocates (ASJA): Other judge advocates assigned to the staff judge advocate's office. ASJAs support the SJA in his or her role as the Wing Commander's legal advisor. In this capacity, they may perform duties such as
  - Claims Officer
  - Chief of Military Justice
  - Chief of Civil Law
- Area Defense Counsel (ADC): Judge advocate performing defense counsel duties at an installation
  - Reports through the defense community chain of supervision to TJAG
  - Not assigned to the SJA

*Legal Issues Specific to the Commander - 7*

## FUNCTIONAL ORGANIZATION OF THE BASE LEGAL OFFICE

The legal office provides a wide range of legal services to the Wing Commander and the base at-large. The following is a general overview of the divisions within a typical legal office and the services they provide:

- Military Justice Division: Responsible for advising commanders on discipline and military justice matters. Includes advising commanders on, and preparing documents for, courts-martial and nonjudicial punishment (Article 15, UCMJ).
- Claims Division: Responsible for processing household goods claims submitted by military members. Also handles the initial processing of tort claims against the Air Force and claims by the Air Force against individuals and entities.
- International and Operations Law Division: Responsible for advising commanders on international and operational law issues such as foreign criminal jurisdiction, international agreements, rules of engagement and targeting as well providing Law of Armed Conflict training and guidance
- Civil Law Division: A number of different legal topics fall under the category of civil law. These different areas may be included in a single, Civil Law division or they may be broken down into separate divisions. Areas within the Civil Law division may include: contract law; labor law; environmental law; and general civil law (dealing with issues such as private organizations, use of USAF assets, various personnel issues and noncriminal investigations such as Reports of Survey and Line of Duty determinations).
- Legal Assistance and Preventative Law Division: Responsible for educating the base population on legal issues that affect military members and their dependents as well as providing legal assistance. Legal assistance attorneys cannot draft court documents or represent members or their families in court but they can provide advice on a range of legal issues including, but not limited to, adoption, consumer law, divorce and child custody, income taxes, the Servicemembers' Civil Relief Act and wills. This division also provides free notary services.
- Adverse Actions Division: Advises commanders on, and prepares documents for, administrative discharges. Provides legal guidance related to Quality Force Management tools such as control rosters, unfavorable information files, administrative demotions, letters of reprimand, letters of admonishment, letters of counseling and records of individual counseling.

### REFERENCE:

AFI 51-102, *The Judge Advocate General's Department* (19 July 1994)

## **RELIGIOUS ACCOMMODATION AND COMMAND ACTION**

DoD policy provides that commanders should approve requests for religious accommodation when approval will not have an adverse impact on military readiness, unit cohesion, standards, or discipline. For guidance on handling religious accommodation requests regarding conscientious objectors, dress and personal appearance, or immunizations, refer to the AFIs specifically covering these areas. For all other religious accommodation requests, follow the guidance in DoDD 1300.17, *Accommodation of Religious Practices Within the Military Services*, 3 February 1988, and in the *Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force*, 9 February 2006.

### **RELIGIOUS PRACTICES**

- The *Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force* amplify the DoD policy, providing that the Air Force will accommodate the free exercise of religion and other personal beliefs except as must be limited by compelling military necessity (with any limitations being imposed in the least restrictive manner feasible)
- Factors to consider in deciding whether to accommodate religious practices include
  - The importance of the military requirement, in terms of individual unit readiness, health and safety, discipline, morale, and cohesion
  - The religious importance of the accommodation to the requester
  - The cumulative impact of repeated accommodations of a similar nature
  - Alternative means available to meet the requested accommodation
  - Previous treatment of the same or similar requests, including requests made for other than religious reasons

### **PRAYER/RELIGIOUS CONTENT IN VARIOUS SETTINGS**

- Public prayer must not imply government endorsement of religion and should not usually be a part of routine official business, e.g. staff meetings
- Mutual respect and common sense should always be applied, including consideration of unusual circumstances such as a recent death or imminent danger

- Non-denominational, inclusive prayer or a moment of silence may be appropriate for military ceremonies or events of special importance when its primary purpose is not the advancement of religion or religious beliefs (examples: Leadership School graduation, promotion ceremonies)
- More religious content/prayer is acceptable in ceremonies which are essentially personal even though they occur during duty hours, in government facilities, and are attended by Air Force personnel in duty status
  - There is specific guidance (available in protocol offices) restricting use of military personnel from having roles in flag-folding ceremonies in which a specific alleged meaning (usually religious) is attributed to each fold

### **SHARING OF FAITH**

- Leaders must ensure their words and actions cannot reasonably be construed to be officially endorsing or disapproving any faith belief or absence of belief
- In official circumstances, or when superior/subordinate relationships are involved, superiors need to be sensitive to the potential that personal expressions may appear to be official
- Voluntary participation in worship, prayer, study, and discussion is integral to the free exercise of religion. Nothing in the recent guidance should be understood to limit voluntary discussions of religion, even if conducted in uniform, where it is reasonably clear that the discussions are personal, not official, and can be reasonably free of the potential for, or appearance of, coercion, including attendance at annual prayer breakfasts, even if in uniform.

### **RELIGIOUS APPAREL**

- Religious apparel is defined as articles of clothing worn as part of the doctrinal or traditional observance of the religious faith practiced by the member. Hair and grooming practices required or observed by religious groups are not included within the meaning of religious apparel. The wear of jewelry bearing religious inscriptions or otherwise indicating religious affiliation or belief is subject to AFI 36-2903, *Dress and Personal Appearance of Air Force Personnel*.
- AFI 36-2903, table 2.6, specifically allows the installation commander and chaplain to approve a religious head covering indoors so long as it is plain and dark blue or black. Outdoors, the installation commander and chaplain may approve a religious head covering concealed under headgear.

- Other religious apparel must be concealed or worn only during religious services or at home. Otherwise the member must process a religious apparel waiver request in accordance with AFI 36-2903, table 2.8.

**REFERENCES:**

42 U.S.C. § 2000bb, *The Religious Freedom Restoration Act* (applicable to DOD per DOD/GC even though not mentioned in DoDD 1300.17)  
DoDD 1300.17, *Accommodation of Religious Practices Within the Military*, 3 February 1988, Ch 1, 17 October 1988 (revision in progress to reflect the Religious Freedom Restoration Act)  
AFI 36-2706, *Military Equal Opportunity Program* (29 July 2004)  
AFI 36-2903, *Dress and Personal Appearance of Air Force Personnel* (29 September 2002)  
AFI 36-3204, *Procedures for Applying as a Conscientious Objector* (15 July 1994)  
AFJI 48-110, *Immunizations and Chemoprophylaxis* (12 May 2004)  
*Revised Interim Guidelines Concerning Free Exercise of Religion in the Air Force*, 9 February 2006



# **FITNESS PROGRAM**

The goal of the Fitness Program is to motivate all members to participate in a year-round physical conditioning program that emphasizes total fitness, to include proper aerobic conditioning, strength/flexibility training, and healthy eating. Commanders and supervisors must incorporate fitness into the Air Force culture to establish an environment for members to maintain physical fitness and health to meet expeditionary mission requirements and deliver a fit and ready force. AFI 10-248, Fitness Program, dated 25 September 2006, applies to all Air Force members.

## **UNIT/SQUADRON COMMANDER'S DUTIES**

- The unit/squadron commander's duties include, but are not limited to, the following
  - Implementing and maintaining a unit/squadron physical training (PT) program, led by a trained Physical Training Leader
  - Ensuring members are permitted up to 90 minutes of duty time for PT three weekly
  - Taking appropriate action in response to failure to participate and/or an assessment of poor fitness

## **PHYSICAL FITNESS STANDARD**

- Members will receive a composite score on a 0 to 100 scale based on the following maximum component scores
  - 50 points for aerobic fitness assessment
  - 30 points for body composition (based on abdominal circumference or body mass index)
  - 10 points for push-ups, and
  - 10 points for crunches
- The following fitness levels are determined by a member's composite score
  - Excellent (90 or above)
  - Good (75 to 89.99)
  - Marginal (70 to 74.99)

- Poor (under 70)
- Members will usually complete their fitness testing according to the following timelines
  - Excellent/good score member must test within 12 months
  - Marginal score must test within 90 days (but not earlier than 42 days after testing)
  - Poor score must test within 90 days (but not earlier than 42 days after testing)

#### **ADMINISTRATIVE AND PERSONNEL ACTIONS**

- An unexcused failure to report for a scheduled fitness appointment may be punishable as a violation of the UCMJ, including, but not limited to, Articles 86, 90 or 92
- Unit commanders should not use administrative action (LOC, LOA, or LOR) for members with a poor fitness score for the first 90 days (or 42 days if retested earlier) days after the member received a composite score under 70 if the sole basis for action is the fitness assessment
  - Unit commanders will take administrative action for unexcused failure to participate when an individual fails to accomplish a scheduled fitness test, fails to attend a scheduled fitness appointment, or negligently fails to maintain the required documentation of exercise while on the Fitness Improvement Program (FIP)
  - Unit commanders will take administrative action for members that have a composite score under 70 for greater than 90 days and each subsequent composite fitness score under 70 if the member shows no sign of improvement
  - Failing to make satisfactory progress in the FIP does not in itself constitute a violation of the Uniform Code of Military Justice. Unit commanders may not impose non-judicial punishment on members solely for failing to achieve a score of 70 points or greater.
  - Commanders will review and determine personnel actions (eligibility for reenlistment, retraining, formal training, PME and promotion) for those individuals who are identified with a poor fit assessment for greater than 180 days and each subsequent test thereafter



- Unit commanders will make a recommendation to the installation commander to discharge or retain a member who remains in the poor fitness category for a continuous 12-month period or has 4 poor fitness assessments in a 24-month period. See AFI 36-3206 for officer discharge procedures and AFI 36-3208 for enlisted discharge procedures.
- Attachment 13 of AFI 10-248 lists administrative actions available to commanders when dealing with members who are not meeting Fitness Program standards
- The attachment at the end of this section provides guidance to commanders of members with a poor fitness assessment

#### **FAILING TO PRESENT A PROFESSIONAL MILITARY IMAGE**

- Commanders must ensure members present a professional military image while in uniform
- Commanders may
  - Require individuals who do not present a professional military appearance (regardless of overall fitness composite score) to enter the FIP
  - Schedule members for fitness education/intervention

#### **REFERENCE:**

AFI 10-248, *Fitness Program* (25 September 2006)

#### **ATTACHMENT:**

Commander's Checklist – Member with Poor Fitness Assessment

<p style="text-align: center;"><b>COMMANDER'S CHECKLIST -- MEMBER WITH POOR FIT ASSESSMENT (Reference AFI 10-248, <i>Fitness Program</i>)</b></p>		<p>PAGE _ OF _ PAGES</p>		
N O	ITEM	YES w/ dates	NO	N/A

<p><b>A. TESTING, RETESTING, AND FITNESS REVIEW PANEL:</b></p> <ol style="list-style-type: none"> <li>1. Unit fitness program manager (UFPM) administers fitness screening questionnaire (FSQ) w/in 30 calendar days, but NLT 7 days prior to fit test to allow medical evaluation when indicated and files FSQ in member's PIF (ref para 4.2)</li> <li>2. Member retests NET 42 and NLT 90 days after each poor fitness assessment – unit commander takes admin action for member's unexcused failure to accomplish a scheduled fitness assessment (ref paras 3.4.3, 3.5.3 and 8.2.1.1)</li> <li>3. UFPM schedules fitness review panel (FRP) meeting when member in the poor fit category fails to achieve a higher score on 90-day retest (ref para 5.4.1)</li> <li>4. FRP recommendations are documented on AF Form 108 (ref paras 5.4.2.2 and 8.4.4)</li> <li>5. Unit commander reviews FRP recommendations and signs AF Form 108 (ref paras 5.4.2.2 and 8.4.4)</li> </ol> <p><b>B. INTERVENTION REQUIREMENTS:</b></p> <ol style="list-style-type: none"> <li>6. Member attends Healthy Living Program (HLP) w/in 10 duty days of poor (or marginal) fitness assessment (ref paras 5.2.2 and 5.3.1)</li> <li>7. UFPM initiates and annotates HLP requirements and appointments on AF Form 108 (ref paras 8.4.1, 8.4.2)</li> <li>8. Unit commander and member sign AF Form 108 to confirm all HLP appointments – unit commander takes admin action for member's unexcused failure to attend appointments (ref paras 8.2.1.1, 8.4.3)</li> <li>9. HLP program facilitator signs AF Form 108 upon member's completion (ref para 8.4.5)</li> <li>10. Member in poor category enrolls in Fitness Improvement Program (FIP)</li> <li>11. UFPM initiates and annotates FIP requirements and appointments on AF Form 108 (ref paras 8.4.1, 8.4.2)</li> <li>12. Unit commander and member sign AF Form 108 to confirm all FIP appointments – unit commander takes admin action for member's unexcused failure to attend appointments (ref paras 8.2.1.1, 8.4.3)</li> </ol>			
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<p>13. Member in FIP will exercise 4-5x/week, accomplished during installation FIP training and/or member's unit PT program (ref para 5.2.2.2.1)</p> <p>14. Member in FIP documents exercise participation on AF Form 1975 – unit commander takes admin action for member's failure to document as required (ref paras 5.2.2.2.3 and 8.2.1.1)</p> <p>15. Member in FIP has AF Form 1975 signed/validated by FIP class instructor or unit fitness leader at the end of each exercise session (ref para 5.2.2.2.3)</p> <p>16. UFPM reviews AF Form 1975 monthly for member in FIP (ref para 5.2.2.2.3).</p> <p>17. Member in FIP attends monthly follow-up with FPM until member achieves a score <math>\geq 70</math> (ref para 5.3.2.3)</p> <p>18. FIP facilitator signs AF Form 108 upon member's completion (ref para 8.4.5)</p> <p>19. Member enrolls in Body Composition Improvement Program (BCIP) when member has a fitness score <math>&lt; 70</math> AND abdominal measurement <math>&gt; 40</math> for a male or <math>&gt; 35</math> for a female and attends 1st session w/in 10 duty days of completing HLP (ref para 5.3.2)</p> <p>20. UFPM initiates and annotates BCIP requirements and appointments on AF Form 108 (ref paras 8.4.1, 8.4.2)</p> <p>21. Unit commander and member sign AF Form 108 to confirm all BCIP appointments – unit commander takes admin action for member's unexcused failure to attend appointments (ref paras 8.2.1.1, 8.4.3)</p> <p>22. Member attends monthly follow-up BCIP appointments until member achieves score <math>\geq 70</math> (ref para 5.3.3.2.6)</p> <p>23. BCIP program facilitator signs AF Form 108 upon member's completion (ref para 8.4.5)</p> <p><b>C. REQUIRED PERSONNEL ACTIONS AND RELATED PERSONNEL DATA</b></p> <p>24. Unit commander takes appropriate action when member fails to accomplish a scheduled fitness assessment, attend a scheduled fitness appointment, or maintain the required documentation of exercise while in the FIP (ref para 8.2.1.1)</p> <p>25. Unit commander takes admin action when member's assessment remains <math>&lt; 70</math> for <math>&gt; 90</math> days (ref para 8.2.2 and Table A13.1)</p> <p>26. Unit commander takes additional admin action for each subsequent score <math>&lt; 70</math> when member shows no signs of significant improvement (ref para 8.2.2 and Table A13.1)</p> <p>27. Unit commander reviews and determines personnel actions (eligibility for reenlistment, retraining, formal training, PME, and promotion) when member is in poor fitness category <math>&gt; 180</math> days and after each subsequent poor fitness assessment (ref para 8.2.5)</p>			
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<p>28. Unit commander makes recommendation to installation commander to discharge or retain when member remains in poor fitness category for a continuous period of 12 months or has 4 poor fitness assessments in 24 months (ref para 8.2.6)</p> <p>Unit supplies following personnel data/documents for <u>enlisted</u> members:</p> <ul style="list-style-type: none"> <li>a. Copies of all EPRs</li> <li>b. TAFMSD and current DOS</li> <li>c. Expiration of current enlistment/date of eligibility for selective reenlistment</li> <li>d. Eligibility for promotion or date of projected promotion</li> <li>e. Date/location of projected/tasked deployment</li> <li>f. Eligibility for retraining, formal training, and PME</li> </ul> <p>Unit supplies following personnel data/documents for <u>officer</u> members:</p> <ul style="list-style-type: none"> <li>a. Copies of all OPRs</li> <li>b. TAFMSD and current DOS</li> <li>c. ADSC</li> <li>d. Potential recoupment of education assistance, special pay, or bonuses</li> <li>e. Eligibility for promotion or date of projected promotion</li> <li>f. Date/location of projected/tasked deployment</li> <li>g. Eligibility for retraining, formal training, or PME</li> </ul>			
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